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Serial No.: 10/047,827
Atty. Docket No.: D5110

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
THOMPSON, Jason R.
Serial No.; 10/047,827
Filed: **29 September 2001**

Group Art Unit: **3618**
Examiner: **ROSENBERG**

For: **UNIVERSAL ACCESSORY-MOUNTING ASSEMBLY**

SUBSTITUTE APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The appeal in the present case relates to an application filed originally on 29 October 2001. In 2003 this case had reached a final rejection stage whereupon an appeal was attempted. While an appeal brief was submitted following the final rejection, applicants had inadvertently omitted filing a Notice of Appeal, which eventually led to the application going abandoned. At this time the final rejection of claims 1-40, inclusive, has again been appealed, now pursuant to the 17 February 2005 Petition to Revive Abandoned Application. The Appeal Brief previously entered in the defective appeal was resubmitted but was returned as defective under rules that went into effect subsequent to the defective appeal but prior to the petition to revive. Applicants' substitute appeal brief follows.

(I) Statement of Interest.

The present application is assigned to International Truck Intellectual Property Company L.L.C. which is the sole party of interest.

(II) Related Appeals and Interferences.

The appellants, their legal representative and the assignee know of no other pending appeals or interferences which will directly effect, be directly effected by, or have a bearing on the Board's decision in this appeal. An appeal in this matter was briefed (26 March 2004) and responded to by the Examiner (28 July 2004), however, no decision on the merits was reached at that time. Instead the application went abandoned stemming from the inadvertent omission of a Notice of Appeal on the part of the applicants. Upon petition for revival for unintentional abandonment the appeal brief previously submitted was again submitted but returned per order of the Board as being non-compliant (order attached in appendix).

(III) Status of the Claims

Claims 1-40 stand finally rejected and all are appealed.

(IV) Status of Amendments

An amendment after final was filed 12 January 2004 and was entered for purposes of appeal by communication from the Examiner mailed 20 January 2004.

(V) Summary of the Claimed Subject Matter

Generally the invention addresses the problem of providing a stable, external mount for accessories on trucks. Trucks come in differing, and changing, designs, for which the invention (shown in Figs. 1 and 2) provides an external mounting assembly (10, first described in paragraph [0012]) examples of which adapt on installation to fit

vehicles (11) of different shapes (Fig. 4 and paragraph [0021]). The external mount (10) modifies a prior art tripod mount (illustrated in Fig. 3) by using ball and socket joints (24, Figs. 1 and 2, first described in paragraph [0018]) to attach mounting pads (18, Figs. 1 and 2, paragraph [0018]) to at least one, but preferably all, of the legs (13, Figs. 1 and 2, paragraph [0012] where termed "support components"). Any mounting pad (18) attached to a leg by a ball and socket joint (24) may individually assume any required orientation (Fig. 4, also paragraphs [0013]-[0014]) allowing the pad to squarely meet a vehicle body structure (16). Allowance for height adjustment of two legs on the third (either Fig. 1 or as in the prior art at Fig. 3) is conventional as is the capacity to vary the angle of extension of the legs (13, paragraph [0015]). The tripod is secured to the body structure by threaded studs (26, Figs. 1, 2 and paragraph [0018]) extending from the pads into the body structure (Fig. 1, paragraph [0018]). The three, or more, legs are stabilized upon securing the pads at three or more points of attachment which fix the ball and socket joints of the structure from further rotation (paragraph [0013] at page 6, lines 8-10) and clamping the upper pivot bolts 25 (paragraph [0016] at page 8, lines 19-23) .

Independent claims 1 and 18 are summarized below. There being no means plus function elements outside of claim 1 none of the dependent claims is discussed.

Claim 1

Claim 1, in the preamble, provides for a universal accessory-mounting assembly (10) for supporting an accessory (22) at a distance from a base structure (16)/body structure (12) to which the universal accessory-mounting assembly is attached. Support for this subject matter appears generally in paragraph [0012] on page 5, lines 1-3 in almost so many words. All the elements identified by reference numerals are shown in Fig. 1 except the element "body structure" which is shown in Fig. 4.

The claim further provides for three or more support components (13) each of which has a base end (14) and an accessory-support end (15). Again these elements are described in paragraph [0012] (page 5, lines 3-5) and shown in Fig. 1. Each support component has its accessory-support end engaged directly or indirectly to accessory-support ends of every other support component. See paragraph [0012] (page 5, lines 10-14) and Fig. 1. Also provided are at least two base-attachment structures (17) each of which is engaged to a base end (14) of one of said support components (13). This subject matter is described in paragraph [0013] (page 5, lines 14-16) and shown in Figs. 1 and 2. Claim 1 includes a means plus function element for attachment of the base attachment structures (17) to the base structures (16). This is provided by a threaded stud/bolt (26) projecting from the flat bottom mounting face (19) of the base attachment structure (17) and a cooperating nut. See Fig. 2 and the description at paragraph [0018] (page 9, line 27 to page 10, line 13). The claim further requires at least one base attachment structure be bi-axially pivotally engaged with its respective support component (13) using a ball and socket joint (24). The ball and socket joint is described in paragraph [0013] (page 5, line 14 to page 6, line 10). An accessory-attachment structure (23) is generally an accessory support end (15) of a support component as described in paragraph [0012] and shown to best advantage in Fig. 2. See page 5, lines 8-13.

Claim 18

The remaining independent claim presents the invention in the context of its combination with a vehicle (11). This combination is described in paragraphs [0020] and [0021], at page 10, line 30 to page 11, line 24 and shown in Fig. 4. The vehicle has a frame (31) on which most of the vehicle is constructed. See Fig. 4 and paragraph [0021] on page 11, lines 6-10. The claim further provides a suspension system (32) which is engaged to the frame structure and supports the frame structure above the

ground. See paragraph [0021], page 11, lines 10-13 and Fig. 4. The body structure 12 is supported on the frame and includes substructures such as a cab (29) for passengers. See paragraph [0021], page 11, lines 13-24 and Fig. 4. The claim then returns to substantially the same subject matter of claim 1. A universal accessory-mounting assembly (10) supports an accessory (22) at a distance from the base structure (16)/body structure (12). Support for this subject matter appears generally in paragraph [0012] on page 5, lines 1-3. All the elements identified by reference numerals are shown in Fig. 1 except the element "body structure" which is shown in Fig. 4. The claim further provides for three or more support components (13) each of which has a base end (14) and an accessory-support end (15). Again these elements are described in paragraph [0012] (page 5, lines 3-5) and shown in Fig. 1. Each support component has its accessory-support end engaged directly or indirectly to accessory-support ends of every other support component. See paragraph [0012] (page 5, lines 10-14) and Fig. 1. Also provided are at least two base-attachment structures (17) each of which is engaged to a base end (14) of one of said support components (13). This subject matter is described in paragraph [0013] (page 5, lines 14-16) and shown in Figs. 1 and 2. The base attachment structures (17) are engaged to the base structures (16). See Fig. 2 and the description at paragraph [0018] (page 9, line 27 to page 10, line 13). The claim further requires at least one base attachment structure be bi-axially pivotally engaged with its respective support component (13) using a ball and socket joint (24). The ball and socket joint is described in paragraph [0013] (page 5, line 14 to page 6, line 10). An accessory-attachment structure (23) is generally an accessory support end (15) of a support component as described in paragraph [0012] and shown to best advantage in Fig. 2. See page 5, lines 8-13.

(VI) Grounds of rejection to be Reviewed on Appeal

The claimed invention of this appeal stands rejected as unpatentable for obviousness under the criteria of 35 U.S.C. 103(a). More particularly, claims 1-40 stand

rejected over Murgas (US-P 3,395,883) in view of Rawlinson (US-P 5,100,093). Claims 1-40 were also rejected in the alternative over applicants admitted prior art ("AAPA", Fig. 3 of the present application) in view of the Rawlinson '093 patent. The issue on appeal is whether the Examiner correctly held that it would have been obvious to one having ordinary skill in the art to combine the references and admitted prior art in order to produce the claimed invention.

(VII) Argument Against Combination of the References

Two arguments against patentability have been advanced, for obviousness over Murgas in view of Rawlinson and, in the alternative, the AAPA in view of Rawlinson. To overcome the argument the applied prior art is reviewed in detail.

1. Construction of the Rawlinson '093 patent

The Rawlinson '093 patent is used as a secondary reference to modify either the Murgas '883 patent or the AAPA. Its pertinence to the present application stems from its teaching of the use of ball and socket joints in a mounting arrangement for a mirror on a speed boat windshield. The reference is examined in detail primarily as argument that the reference does not supply a teaching which supports the proposed modification of using ball and socket joints in an assembly having three points of support.

Rawlinson teaches a system for mounting a mirror to the top frame rail of boat windshields which allows the mirror to be pivoted between upright and lowered, stowed positions. The frame rail of the windshield may be of various shapes. See Rawlinson '093 patent, col. 1, lines 53-60. The support arrangement of Rawlinson is explicitly adapted to a "mounting for an elongated, relatively narrow, mirror above the windshield of a ski boat". See '093 patent, col. 1, lines 65-66. Rawlinson teaches supporting the

elongated mirror at each end of the mirror using *two legs or "arms 34"*. See '093 patent, Figs. 2, 3, 15, 16; col. 4, lines 31-34, emphasis supplied. This mirror mounting arrangement provides (using various types of pivoting joints, including ball and socket arrangements as shown in Fig. 5) "a multi-axis pivot that adapts to a wide variety of windshield shapes, *and* that permits pivoting the mirror down and out of the way when not in use". See '093 patent, col. 2, lines 4-7, emphasis added. The mounting arrangement further allows adjustment "to the angle of the windshield" and presumably the height of the boat's pilot. See '093 patent, col. 2, lines 20-24. The "angle of the windshield" is taken to mean the degree of rake of the windshield. Two functions are served by providing pivotal joints. The first purpose is to allow orientation (in at least one axis) of the attachment brackets to the windshield frame. The second purpose to allow downward pivoting for storage.

Rawlinson teaches three types of ball and socket support arrangements which allow fitting of a rear view mirror to a windshield frame and lowering of the mirror for stowage. The first "ball and socket" embodiment is shown in Fig. 5 of the patent, wherein a support leg (ball socket member) 55 is attached to a clamp 51 by use of a cap screw (not shown) through a counter bored clearance hole 53 through the clamp and a slot 57 through the support leg. The clamp (corresponding to the base-attachment structure of the present application) and the ball socket member (corresponding to the support member) are not engaged to one another by the ball and socket joint but rather by a screw to be introduced through the clamp into the ball socket member. See generally, col. 5, lines 4-35 of the '093 patent. Slot 57 allows the supported structure to be folded downwardly. Use of a ball seems to be regarded as necessary to allow the clamp to rotate on an axis corresponding to the direction of elongation of the ball socket member in a fashion similar to that indicated for the embodiment Rawlinson described with reference to Fig. 3. See the arrow identified with reference numeral 46. Such an adaptation allows fitting of the device to windshields having angled sections. See Fig.

16. It may be noted that once a screw is introduced, movement of the clamp relative to the ball socket member is limited to rotation on this axis of the screw and to folding on a single axis. The movement is no longer biaxial, as the term is used in the present application.

Rawlinson's second and third ball-and-socket embodiments are closely related. They are illustrated in Rawlinson in Figs. 6-10. For these embodiments the ball element is described as "... a partial ball having a threaded counter shank 61." This structure is screwed into a clamp 63. "A ball socket member has a cylindrical ball socket that is adapted to slide down over the ball. The ball socket member is provided with a split that permits a clamping action on the ball." See '093 patent, col. 5, lines 38-47. Engagement does not occur until a screw is used to clamp the socket on to the ball since the supported structure is free to move up and down. Once engagement is achieved biaxial freedom of movement is replaced by freedom of movement in a single axis.

At page 4, in the first full paragraph of the final action, the following statement appeared:

Rawlinson discloses three support components (#16, 20, 28) being engaged to each other in such a manner that they are selectively movable relative to each other, the three support components being uniaxially pivotally engaged to each other and their orientations being uniaxially pivotally adjustable relative to each other (column 2, lines 20-21, 25-28).

The Examiner intended to reference the Murgas '883 patent rather than the Rawlinson for this point. Rawlinson appears strictly limited to a situation where exactly two points of support are used.

Applicants emphasize that while Rawlinson saw advantages in use of ball and socket joints in fitting his device to a top frame of a windshield, which could have a variable curvature, he did not contemplate, and did not provide, a teaching that would suggest extending this insight to use of such joints in a stable support assembly having a minimum three points of support as provided in both claims 1 and 18 (both of which require "three or more support components"). The Rawlinson device used the joints so that his assembly could be folded down when not in use. For this to happen the joints, and their axes of rotation, must align, which is always the case where exactly two ball and socket joints are used. The use of two ball and socket joints is one way to preserve the fold down feature essential to Rawlinson. No teaching exists in Rawlinson for extending the use of ball and socket joints to an assembly always having at least three points of support since there would be no assurance that the joints would be aligned. Rawlinson desired to preserve movement on the joints after installation without binding (see particularly col. 5, lines 28-32). Such "flexibility" is unneeded in the present application or the AAPA after installation, and is undesirable in Margas. Lastly, Rawlinson's adapted ball and socket joints for his invention by providing for clamping them, see col. 5, lines 45-48, and thus there is no teaching that they would be stable in the application of the present invention.

2. Comments on Appealed Claims 1 and 18 in view of Rawlinson

Rawlinson does not teach a "universal accessory-mounting assembly for supporting an accessory" as provided in the claim preamble of claim 1 or a "universal accessory-mounting assembly" as required in as element (d) of claim 18. The present application uses the term "universal" to refer to the variety of accessories which can be supported. See paragraph [0012]. Rawlinson explicitly relates to support of an elongated mirror in a way allowing the mirror to be lowered when not in use. Further, in the Rawlinson the mirror is positioned between two legs and is a necessary component

of the assembly and not something installed on the assembly. In essence, there is no "assembly" without the mirror/accessory.

3. Construction of the Murgas '883 patent

Murgas teaches a Detachable Fender Mounted Rear View Mirror comprising a tripod shaped assembly based in part on a center tube 16, a "lateral brace 20" and a "longitudinal brace 22". These elements form an upper triangular unit fitted by hooks along one side to the gap between the vehicle fender and the motor vehicle's hood. A support leg 28 extends downwardly from tube 16 to engage the vehicle's wheel well. The structure is stabilized, and the fender and hood feet maintained in gripping position by a Y-shaped clamping rubber 40 having outer ends secured to the feet at the ends of the legs and tube. The Y-shaped clamping rubber is under tension (or "stretched") to hold "the feet in clamped position and [to mount] the frame firmly in place with minimal vibration". See col. 1, lines 51-52.

In Murgas the tension applied to the feet by the Y-shaped clamping rubber 40 that is not directly aligned with the support legs 16, 20, 28. If the feet were rotatable, the clamping rubber, being under tension, could urge rotational movement of the feet to relieve that tension. Such an occurrence would not improve security of the rear view mirror on the fender and certainly would not serve to minimize vibration.

The Murgas structure, unlike Rawlinson, the Admitted prior art, or the invention of the application under appeal, is intended to be readily removable. Murgas stated that "The unit can be taken from its carton installed on the fender or removed from the car and packed in its carton in less than 20 seconds. . . . no nuts, bolts, screws, or turn buckles are used . . ." (Murgas '883 patent, col. 1, lines 53-58). Murgas did not intend the use of tools to remove or install the device. It is applicants' position that such ease

in removability of the device, achieved without compromise of stability or security of the device when installed on the fender of a vehicle, was better served by fixed position feet, as Murgas used. Modification of Murgas by making the feet pivotable is not taught by Murgas and would compromise it operationally.

The present invention, unlike the device of Murgas, is fixed to exterior surfaces and not removably hooked into position. It may be positioned largely independent of the orientation of those surfaces. See specification paragraph [0005] where it states "Because the base attachment structure is biaxially pivotally engaged to the support component its orientation relative to the rest of the universal accessory-mounting assembly and the surface of the base structure can be adjusted indefinitely with a wide range of angles about two axes . . .". This is achieved by providing, as claimed, a "biaxially pivotally engaged" connection between the support legs and the "base-attachment structures" (element (e) of claim 1 and element (h) of claim 18).

4. Applicants' Admitted Prior Art

As shown in Fig. 3 of the application under appeal, Applicants' Admitted Prior Art is an accessory mount. The present invention is a direct modification of the AAPA to incorporate bi-axially pivotal feet to eliminate fixed orientation mounting of the tripod or the necessity of adapting the support legs of the AAPA to fit particular vehicles. The AAPA does not teach attaching mounting pads to leg supports using biaxially pivotable mounting pads for any combination of legs supports.

5. The Unapplied References of Record

On consideration of the arguments advanced in the present appeal review of the unapplied references of record was made. A comment regarding the unapplied Strauss

reference, U.S. Patent 5,237,459, is deemed appropriate. Strauss '459 provides a windshield mounted rear view mirror supported from an adjustable frame. The frame is based on two height adjustable mounting arms 8 and an articulating arm 9. The arms terminate in suction cups for attachment to the inside of a windshield. Although not referenced by numbers in the drawings or the detailed description, each suction cup is attached to its respective mounting arm by a ball and socket type joint. Strauss '459 patent, col. 3, lines 9-13. The object of using suction cups and articulating and height adjustable frame arms appears to be to make the device readily positionable and adjustable. Provision of an articulating arm and the use of temporary attachment suction cups instead of mounting pads distinguish this reference from the claims of the present application. That one of three legs of Strauss is articulated may affect application of the reference to the primary references which do not have articulated support legs. The balance of the unapplied art appears cumulative over the applied art.

6. Failure to Find Basis for Combination of the References
Argues for Patentability of All of the Claims

It would not have been obvious to provide a fender mounted tripod accessory approach with multi-axially pivotal attachment feet for either a subset including at least one of its three legs or for all three of its legs in view of the applied art. The obviousness analysis, at its most general is based on the well known *Graham* factors:

(1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McGinley v. Franklin Sports, Inc.*, 60 USPQ2d 1001, 1007 (Fed. Cir. 2001) citing *Kegel Co., Inc. V. AMF Bowling, Inc.*, 127 USPQ2d 1027, 1031-1032 (Fed. Cir. 1997).

Secondary considerations have not been presented in the prosecution of the present

application. The art is a mechanical and predictable. The ordinary level of skill may be taken as one with some engineering training, including a technical degree and some experience in the motor vehicle industry.

The Examiner has answered the shortcomings in the primary references (in the AAPA the lack of biaxially pivoting attachments between mounting pads and support legs) by proposing modification of the references in view of Rawlinson.

In considering a combination of references the questions before the board are:

(a) whether a combination of the teachings of all or any of the references would have suggested (expressly or by implication) the possibility of achieving further improvement by combining such teachings along the line of the invention in suit, and (b) whether the claimed invention achieved more than a combination which any or all of the prior art references suggested, expressly or by reasonable implication." *In re Sernaker*, 217 USPQ 1001, 5 (Fed. Cir. 1983).

Put another way:

If all the elements of an invention are found in a combination of prior art references, a proper analysis under §103 requires, *inter alia*, consideration of two factors: (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process; and (2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success. *Velander v. Garner*, 68 USPQ2d 1769, 1772 (Fed. Cir. 2003).

"The first requirement, the motivation to combine references, serves to prevent hindsight bias." *Medichem S.A. v. Rolabo S.L.*, 77 USPQ2d 1865, 1869 (Fed. Cir 2006). In *McGinley v. Franklin Sports, Inc.*, 60 USPQ2d 1001 (Fed. Cir. 2001) the Federal Circuit reversed a judgement of invalidity for obviousness and reinstated a jury verdict for the patentee.

The facts concerning the patent and prior art were summarized by the Court at pages 60 USPQ2d at 1003-4. McGinley's patent related to an instructional baseball pitching device with "finger placement indicia" for teaching how to grasp a baseball for different pitches. Indicia were marked on the ball in two sizes to differentiate right handed grips from left handed grips. Indicia were color coded to indicate the type of pitch. Placement for the palm was also indicated. The primary reference cited by the Applicant both to the Office and at trial was a United States Patent 2,925,273 to Pratt. Another reference, Morgan (3,110,494), though before the Office, came into issue only at litigation. Pratt like McGinley taught using a regulation baseball having multiple sets of finger placements for specific types of pitches. Pratt added an equatorial band comprising complementary colors which, upon throwing the ball, bended into a single color indicating that the ball had been thrown with the correct rotation. The Court commented that the similarities between McGinley and Pratt were striking, but noted that there were "a few" differences. Of particular significance to the Court was that Pratt had not taught using color to distinguish between grip points for left handed and right handed pitchers. Pratt's finger placement points were also described as "circular" rather than "egg-shaped".

The Morgan reference was relied on at trial to modify Pratt to teach the McGinley invention. It was argued by defendant that the:

"only element that is not clearly anticipated by the Pratt patent is the finger shaped marks that orient the ball with respect to the palm of the user's hand. . . . the concept of a set of finger marks to orient the ball is clearly taught in the Morgan patent. 60 USPQ2nd at 1007.

The Federal Circuit however noted that the Morgan reference did not show markings for at least three different types of pitches, as did the McGinley patent, and that Morgan did not use a real baseball, as McGinley did. However, the Court characterized McGinley's best argument as being the one arguing that the references taught away from his

patent. 60 USPQ2d at 1010. In essence this argument was that Pratt, though he taught finger position, in effect taught away from indicating finger orientation, because providing such would have destroyed the equatorial band feature.

Against the present application the Rawlinson reference is cited for providing the missing, pivotal connectors between the leg supports for a outside rear view mirror support tripod and the feet for the tripod to be attached to various exterior vehicle surfaces as a modification of both Murgas and the AAPA. Rawlinson however, deals with a situation where only two support positions are to be used and the entire structure is meant to be folded downwardly for storage. Were a structure intended to be folded downwardly in the manner contemplated by Rawlinson, all of the pivotable connecting members would have to be co-axial, which occurs automatically where only two support legs are present. No reason was supplied by Rawlinson, or found in the applied references, that would suggest using ball-and-socket joints between some of the support legs of a tripod and its feet. There is no teaching here to support the proposed modifications of either the AAPA or Murgas.

There are additional reasons to reject the modification of Murgas to incorporate a ball and socket coupling between the "hood feet 36" or "fender foot 34" and the tube 16, brace 20 or leg 28. Such a combination has the potential of rendering the apparatus taught by Murgas inoperable. Murgas states that "[i]n order to maintain the fender foot 34 and hood feet 36 in fender gripping position, a Y-shaped clamping rubber 40 . . . has each of the outer ends of its legs secured [by rivets 23, 42] to such feet . . . all of which also secure these feet to the tripodal mounting 14.". See '883 patent, col. 2, lines 39-44. Were hood feet 34 attached to their respective legs using a floating or pliable means of attachment they would be free to rotate upwardly from the fender (see Fig. 3 of the '883 patent). Rotation of the feet would be possible under tension of the clamping rubber. Murgas depends upon externally applied force to keep the attachment feet

properly located, which is undercut if the feet have no fixed orientation with respect to the elements of the tripod structure. While Murgas intended his device to be readily detachable it is unlikely that Murgas intended his device to be self detaching.

7. Absence from the Art of Teaching a Limitation of Claims 2 and 19

Claims 2 and 19 provide that "one or less of said base-attachment structures are engaged to a base end of a support component in a manner other than being biaxially pivotally engaged through a ball-and-socket joint". The prior art uniformly illustrates connection of the legs of an accessory support and its respective vehicle using either all fixed or all pivotable connectors. That the purpose of the present invention may be achieved using a mixed set of joints highlights the distinctiveness of the invention vis-a-vis the art.

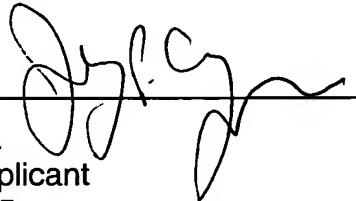
Conclusion

Applicant believes the Claims as amended are in condition for allowance and respectfully requests favorable action by the Board.

Respectfully submitted,

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Date



Catherine M. Majewski

CLAIMS APPENDIX

1.(Previously Amended): A universal accessory-mounting assembly for supporting an accessory at a distance from a base structure to which the universal accessory-mounting assembly may be attached, comprising:

- (a) three or more support components each of which has a base end and an accessory-support end;
- (b) wherein each support component has its accessory-support end engaged directly or indirectly to accessory-support ends of every other support component;
- © two or more independent base-attachment structures each of which is engaged to a base end of one of said support components;
- (d) wherein each of said base-attachment structures comprises means for securing it to the base structure;
- (e) wherein one or more of said base-attachment structures are each biaxially pivotally engaged to said base end of a respective one of said support component(s) by a ball-and-socket joint;
- (f) accessory-attachment structure to which the accessory may be mounted; and
- (g) wherein said accessory-attachment structure is engaged directly or indirectly to and/or comprises one or more of said accessory-support ends of said support components.

2. (Original): The universal accessory-mounting assembly of claim 1, wherein:

- (a) one or less of said base-attachment structures are engaged to a base end of a support component in a manner other than being biaxially pivotally engaged through a

ball-and-socket joint.

3.(Original): The universal accessory-mounting assembly of claim 2, wherein:

- (a) said universal accessory-mounting assembly comprises two or more support components;
- (b) one or more of said support components is/are engaged directly or indirectly to other support component in such a manner that it/they are at least selectively movable relative to said other support components.

4.(Original): The universal accessory-mounting assembly of claim 3, wherein:

- (a) one or more of said support components is/are uniaxially pivotally engaged directly or indirectly to all others of said support components and its/their orientations is/are, therefore, uniaxially pivotally adjustable relative to all others of said support components.

5.(Original): The universal accessory-mounting assembly of claim 4, wherein:

- (a) every one of said base-attachment structures is biaxially pivotally engaged to a base end of one of said support components through a ball-and-socket joint.

6.(Previously amended): The universal accessory-mounting assembly of claim 5, wherein:

- (a) for each support component, which is directly or indirectly uniaxially pivotally engaged to other support components, said universal accessory-

mounting assembly includes structure which can be utilized to selectively secure the orientation of said support component, which is directly or indirectly uniaxially pivotally engaged to other support components, relative to all others of said support components.

7.(Original): The universal accessory-mounting assembly of claim 6, wherein:

- (a) every one of said support components is directly or indirectly uniaxially pivotally engaged to all others of said support components.

8.(Original): The universal accessory-mounting assembly of claim 7, wherein:

- (a) each axis about which each support component is pivotal relative to other support components is disposed at an angle to all other axes about which all other support components are pivotal.

9.(Original): The universal accessory-mounting assembly of claim 8, wherein:

- (a) each of said base attachment structures comprises a mounting pad which has a flat mounting-face which is firmly pressed against the base structure when said universal accessory-mounting assembly is mounted to the base structure.

10.(Original): The universal accessory-mounting assembly of claim 9, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

11.(Original): The universal accessory-mounting assembly of claim 10, wherein:

- (a) each of said support components is a relatively long, thin, member and is of unitary construction.

12.(Original): The universal accessory-mounting assembly of claim 2, wherein:

- (a) every one of said base-attachment structures is biaxially pivotally engaged to a base end of one of said support components through a ball-and-socket joint.

13.(Original): The universal accessory-mounting assembly of claim 12, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

14.(Original): The universal accessory-mounting assembly of claim 13, wherein:

- (a) one or more of said support components is/are engaged directly or indirectly to other support component in such a manner that it/they are at least selectively movable relative to said other support components.

15.(Original): The universal accessory-mounting assembly of claim 14, wherein:

- (a) every one of said support components is directly or indirectly uniaxially pivotally engaged to all others of said support components.

16.(Original): The universal accessory-mounting assembly of claim 1, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

17.(Original): The universal accessory-mounting assembly of claim 2, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

18.(Previously Amended): A vehicle, comprising:

- (a) one or more frame structures to which a large percentage of other components of said vehicle are directly or indirectly engaged and from which said components which are directly or indirectly engaged thereto derive support;
- (b) a suspension system which is engaged to said one or more frame structures of said vehicle and which supports said one or more frame structures of said vehicle above the ground and provides said vehicle with a relatively low resistance to movement along the ground;
- © one or more body structures, which are engaged to and supported by said one or more frame structures and within or upon which passengers and/or cargo may reside;
- (d) a universal accessory-mounting assembly that is mounted to a base structure which is one of said body structures of said vehicle;
- (e) wherein said universal accessory-mounting assembly comprises three or more support components each of which has a base end and an accessory-support end;
- (f) wherein each support component has its accessory-support end engaged

directly or indirectly to accessory support ends of every other support component;

- (g) wherein said universal accessory-mounting assembly comprises two or more independent base-attachment structures each of which is engaged to a base end of one of said support components and each of which is also attached to said vehicle body structure which is said base structure;
- (h) wherein one or more of said base-attachment structures are each biaxially pivotally engaged to said base end of a respective one of said support component(s) by a ball-and-socket joint;
- (i) wherein said universal accessory-mounting assembly further comprises accessory-attachment structure to which an accessory is mounted; and
- (j) wherein said accessory-attachment structure is engaged directly or indirectly to and/or comprises one or more of said accessory-support ends of said support components.

19.(Original): The vehicle of claim 18, wherein:

- (a) one or less of said base-attachment structures are engaged to a base end of a support component in a manner other than being biaxially pivotally engaged through a ball-and-socket joint.

20.(Original): The vehicle of claim 19, wherein:

- (a) said universal accessory-mounting assembly comprises two or more support components;
- (b) one or more of said support components is/are engaged directly or indirectly to other support component in such a manner that it/they are at least selectively movable relative to said other support components.

21.(Original): The vehicle of claim 20, wherein:

- (a) one or more of said support components is/are uniaxially pivotally engaged directly or indirectly to all others of said support components and its/their orientations is/are, therefore, uniaxially pivotally adjustable relative to all others of said support components.

22.(Original): The vehicle of claim 21, wherein:

- (a) every one of said base-attachment structures is biaxially pivotally engaged to a base end of one of said support components through a ball-and-socket joint.

23.(Previously amended): The vehicle of claim 22, wherein:

- (a) for each support component, which is directly or indirectly uniaxially pivotally engaged to other support components, said universal accessory-mounting assembly includes structure which can be utilized to selectively secure the orientation of said support component, which is directly or indirectly uniaxially engaged to other support components, relative to all others of said support components.

24.(Original): The vehicle of claim 23, wherein:

- (a) every one of said support components is directly or indirectly uniaxially pivotally engaged to all others of said support components.

25.(Original): The vehicle of claim 24, wherein:

- (a) each axis about which each support component is pivotal relative to other support components is disposed at an angle to all other axes about which all other support components are pivotal.

26.(Original): The vehicle of claim 25, wherein:

- (a) each of said base attachment structures comprises a mounting pad which has a flat mounting-face which is firmly pressed against said body structure of said vehicle that is said base structure.

27.(Original): The vehicle of claim 26, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

28.(Original): The vehicle of claim 27, wherein:

- (a) each of said support components is a relatively long, thin, member and is of unitary construction.

29.(Original): The vehicle of claim 19, wherein:

- (a) every one of said base-attachment structures is biaxially pivotally engaged to a base end of one of said support components through a ball-and-socket joint.

30.(Original): The vehicle of claim 29, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

31.(Original): The vehicle of claim 30, wherein:

- (a) one or more of said support components is/are engaged directly or indirectly to other support component in such a manner that it/they are at least selectively movable relative to said other support components.

32.(Original): The vehicle of claim 31, wherein:

- (a) every one of said support components is directly or indirectly uniaxially pivotally engaged to all others of said support components.

33.(Original): The vehicle of claim 18, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

34.(Original): The vehicle of claim 19, wherein:

- (a) said universal accessory-mounting assembly comprises three support components and three base-attachment structures.

35.(Original): The vehicle of claim 18, wherein:

- (a) said accessory that is mounted to said universal accessory-mounting assembly is selected from a group consisting of lights, antennas, and

mirrors.

36.(Original): The vehicle of claim 35, wherein:

- (a) said body structures which said vehicle comprises include a cab and an engine compartment hood disposed in front of said cab;
- (b) said base structure to which said universal accessory-mounting assembly is mounted is said engine compartment hood;
- (c) said universal accessory-mounting assembly is mounted at a forward end of said engine compartment hood; and
- (d) said accessory that is mounted to said universal accessory-mounting assembly is a mirror a reflecting surface of which is directed at least partially toward said cab such that a driver of said vehicle can view images of areas in front of, beside, or behind, said vehicle in said reflecting surface of said mirror.

37.(Original): The vehicle of claim 19, wherein:

- (a) said accessory that is mounted to said universal accessory-mounting assembly is selected from a group consisting of lights, antennas, and mirrors.

38.(Original): The vehicle of claim 37, wherein:

- (a) said body structures which said vehicle comprises include a cab and an engine compartment hood disposed in front of said cab;
- (b) said base structure to which said universal accessory-mounting assembly is mounted is said engine compartment hood;

- © said universal accessory-mounting assembly is mounted at a forward end of said engine compartment hood; and
- (d) said accessory that is mounted to said universal accessory-mounting assembly is a mirror a reflecting surface of which is directed at least partially toward said cab such that a driver of said vehicle can view images of areas in front of, beside, or behind, said vehicle in said reflecting surface of said mirror.

39.(Original): The vehicle of claim 30, wherein:

- (a) said accessory that is mounted to said universal accessory-mounting assembly is selected from a group consisting of lights, antennas, and mirrors.

40.(Original): The vehicle of claim 39, wherein:

- (a) said body structures which said vehicle comprises include a cab and an engine compartment hood disposed in front of said cab;
- (b) said base structure to which said universal accessory-mounting assembly is mounted is said engine compartment hood;
- (c) said universal accessory-mounting assembly is mounted at a forward end of said engine compartment hood; and
- (d) said accessory that is mounted to said universal accessory-mounting assembly is a mirror a reflecting surface of which is directed at least partially toward said cab such that a driver of said vehicle can view images of areas in front of, beside, or behind, said vehicle in said reflecting surface of said mirror.

Serial No.: 10/047,827
Atty. Docket No.: D5110

EVIDENCE APPENDIX

N/A

RELATED PROCEEDINGS APPENDIX

1. Order Returning Undocketed Appeal to Examiner
2. On Petition



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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JASON R. THOMPSON, MATTHEW R. LaFONTAINE
and WILLIAM C. DOWNS

Application 10/047,827

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 7, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appellant filed the Appeal Brief of February 17, 2005 using the format set forth in 37 CFR § 1.192(c). However, 37 CFR § 1.192 was abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c).

Accordingly, the Appeal Brief filed on February 17, 2005 does not comply with 37 CFR § 41.37(c). 37 CFR § 41.37 (c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(I) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference

characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by

number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(viii) *Claims appendix*. An appendix containing a copy of the claims involved in the appeal.

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted

after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Upon an in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief of February 17, 2005:

- 1) "Summary of claimed subject matter" as set forth in 37 CFR § 41.37 (c)(1)(v) ;
- 2) "Evidence Appendix", as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 3) "Related Proceedings Appendix", as set forth in 37 CFR § 41.37(c)(1)(x) .

Application 10/047,827

A substitute brief that is in compliance with § 41.37(c) is required. For more information See United States Patent and Trademark website www.uspto.gov in particular the web page entitled More Information on the Rules of Practice Before the BPAI, Final rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

According to the Patent Application and Location and Monitoring (PALM) system a Notice of Appeal and Appeal Brief was filed May 24, 2005. Upon an in-depth review of the file, there is no indication in the record of the Notice of Appeal. Appropriate correction is required.

Further, the Examiner's Answer mailed August 5, 2005 does not comply with the headings set forth in the new rules under 37 CFR § 41.37(c). See MPEP 1207.02. Correction is required.

Accordingly, it is

ORDERED that the application is being electronically returned to the Examiner to:

- 1) hold the Appeal Brief of February 17, 2005 defective;

3) for the examiner to consider the substitute Appeal Brief;
4) for the examiner to make of record that applicants filed
a Notice of Appeal; and
4) and for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

DALE M. SHAW
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OFFICE OF PETITIONS

In re Application of :
Jason R.Thompson, et al. :
Application No. 10/047,827 :
Filed: October 29, 2001 :
Attorney Docket No. D5110 :
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 17, 2005, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned for a failure to respond to a final Office action mailed December 23, 2004. It is noted that an Appeal Brief was filed on March 26, 2004 without first filing a Notice of Appeal and appeal fee under 37 CFR 41.20(b)(1)). A Notice of Abandonment was mailed December 23, 2004. In response on February 17, 2005, the present petition was filed. Petitioners request, in effect, a Notice of Appeal and include a copy of the Appeal Brief filed March 26, 2004.

The appeal fee required under 37 CFR 41.20(b)(1) is being charged to counsel's deposit account as authorized.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.

This application is being forwarded to Technology Center AU 3616.

Sherry D. Brinkley
Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy